IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NO: 21693 of 2004

Between:

The Central Store Purchase Organisation, Rep by its Industries Officer, SK Nazeer Hussain, S/o. Md. Hussain, aged 47 yrs. O/o. Directorate of Industries, II floor, New Administrative Building, Opp : Mantralaya, Maharastra, Mumbai - 400 032.

.... PETITIONER

AND

1 M/s. Hemarajani Tubes Pvt. Ltd., D.No. 5-1-568/3, Hills Street, Ranigunj, Secunderabad-500 003.

2 The Andhra Pradesh Industry Faciliation Council for Arbitration at Hyderabad, Rep by its Chairman,O/o.The Commissioner of Industries,Chirag Ali Lane, Hyderabad-500 001.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari calling for the records relating to and in connection with the Award passed by the R2, vide Case No. 38/1/3/120 dt. 17-7-2004, in Allowing the claim petition filed by the 1st respondent, by way of ex party Award as illegal, without jurisdiction, contrary to law, weight of evidence, contrary to the interest on Delayed payment to S.S. & A.I. Undertakings Act, 1993 and as such liable to be set aside and pass such other order or orders as may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.S.M.SUBHAN

Counsel for the Respondent NO.1: Mr M.V.Suresh Kumar

Counsel for the Respondent No.2: GP FOR INDUSTRIES & COMMERCE

The Court made the following:

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ORDER:

Order dated 17.07.2004 passed by the second respondent is questioned in this petition on the ground petitioner was not served with due notice of hearing.

2. The contention of the learned counsel for the petitioner is that since the petitioner, by the notice in Lr.No.38/1/3/120, Dt.14.7.2004, was directed to appear before the second respondent either in person or through counsel, without mentioning the date of appearance and since that notice in fact was received by the petitioner on 20.07.2004 and since second respondent passed the order impugned on 17.07.2004 itself, the same is vitiated and is liable to be set aside.

3. The contention of the learned counsel for the first respondent is that since the order impugned lists out the various dates to which the case was adjourned at the behest of the petitioner i.e. from 28.8.2003 to 22.12.2003, to 5.1.2004, to 24.1.2004, to 16.2.2004, to 22.3.2004 and 17.5.2004 it is clear that petitioner does have knowledge of the proceedings and since it did not file counter in spite of those adjournments, petitioner cannot be heard to say that he had no notice of the proceedings.

4. On the ground that petitioner failed to submit statement of defence and had failed to appear in person or through counsel, second respondent, when it decided to proceed ex parte, ought not to have issued the notice dated 14.7.2004 in

Lr.No.38/1/3/120 to the petitioner for its appearance either in person or through authorized person without mentioning the date for such appearance. Since fresh notice for appearance was issued it should be deemed that second respondent decided to afford a fresh opportunity of being heard to the petitioner ignoring the earlier decision to proceed ex parte. Since notice dated 14.07.2004 was issued to the petitioner by the 2nd respondent with a direction to appear before it, without fixing a date for such appearance, its passing the order impugned even before the said notice reached the petitioner is against the principles of natural justice and so the same is liable to be set aside and hence is set aside.

5. Since petitioner was given ample opportunity for filing its reply, while allowing the writ petition and setting aside the order impugned, by making the Rule Nisi absolute, petitioner is directed to file its counter or reply, if any, within one month from today in case No.38/1/3/120 which shall be disposed of by the 2nd respondent, as expeditiously as possible, at any rate within two months of the time granted to the petitioner for filing its counter. The amount deposited by the petitioner in pursuance of the interim order shall lie with the Court in which it is deposited till disposal of the case by the second respondent. No costs.

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C.Y.SOMAYAJULU, J

Dated: 18.03.2005

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Friday the eighteenth day of March Two thousand and Five.

ASSISTANT REGISTRAR

To

1 The Chairman, Andhra Pradesh Industry Faciliation Council for Arbitration at Hyderabad, O/o.The Commissioner of Industries, Chirag Ali Lane, Hyderabad-500 001.

2 2 CCs to G.P for Industries & Commerce, High Court

Buildings, Hyderabad (OUT)

3 2 CD copies

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